

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

09-22689

CASE NO. _____ - CIV -

FLORIDA IMMIGRANT ADVOCACY)
CENTER ("FIAC") and SUSANA BARCIELA,)

Plaintiffs,)

v.)

U.S. DEPARTMENT OF STATE,)

Defendant.)
/

CIV-MORENO

TORRES

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552 et seq., ("FOIA"), for declaratory, injunctive, and other relief to compel the disclosure and release of documents underlying the Government's decision not to grant Temporary Protected Status ("TPS") to Haitian nationals who are in the United States but are facing deportation to Haiti.

2. On December 19, 2008, the U.S. Department of Homeland Security ("DHS") cited undisclosed recommendations by U.S. Citizenship and Immigration Services ("USCIS") and the Department of State to deny Haitian President Rene Preval's request that the United States extend TPS to Haitians in light of the country's physical devastation following a series of storms.

3. Defendant U.S. Department of State has violated the FOIA by failing to respond to Plaintiffs' request for these records, denying Plaintiffs' request to expedite based on an impending humanitarian crisis and the public's right to know, failing to respond to Plaintiffs' appeal of that decision, and failing to comply with FOIA's time limitations.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331 and 1361. The Court's review of the matter is de novo. 5 U.S.C. § 552(a)(4)(B).

5. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e), as Plaintiff Florida Immigrant Advocacy Center has its principal place of business in the Southern District of Florida, and Plaintiff Susana Barciela resides in the Southern District of Florida.

6. Declaratory relief is authorized by 28 U.S.C. §§ 2201-2202 and Rule 57, Federal Rules of Civil Procedure, Fed. R. Civ. P. 57.

PARTIES

7. Plaintiff FLORIDA IMMIGRANT ADVOCACY CENTER ("FIAC") is a legal assistance organization dedicated to protecting and promoting the basic human rights of immigrants of all nationalities. FIAC is based in Miami.

8. Plaintiff SUSANA BARCIELA, FIAC's Policy Director, is responsible for disseminating information to the public on pressing immigration policy matters through comprehensive reports, meetings with community and national leaders, and regular interaction with the English- and Spanish-language media.

9. Defendant U.S. DEPARTMENT OF STATE is a department of the Executive Branch of the United States Government. The State Department is an agency within the meaning of 5 U.S.C. § 552(f)(1).

LEGAL FRAMEWORK

10. The Freedom of Information Act (“FOIA”) requires agencies to determine within 20 business days of a request for records whether the agency will comply with the request, and immediately notify the requester of the agency’s decision, the reasons therefor, and appeal procedures for adverse determinations. 5 U.S.C. § 552(a)(6)(A)(i).

11. The FOIA further requires each agency to promulgate regulations providing for expedited processing where the requester demonstrates a compelling need for the information. 5 U.S.C. § 552(a)(6)(E)(i). The statute defines “compelling need” as meaning:

- (I) that a failure to obtain requested records on an expedited basis under this paragraph could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or
- (II) with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

5 U.S.C. § 552(a)(6)(E)(v).

12. The Department of State’s FOIA regulations provide that a “compelling need” exists where:

- (1) Failure to obtain requested information on an expedited basis could reasonably be expected to: Pose an imminent threat to the life or physical safety of an individual; impair substantial due process rights; or harm substantial humanitarian interests.
- (2) The information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity. News media requesters would normally qualify; however, other persons must demonstrate that their primary activity involves publishing or otherwise disseminating information to the public, not just a particular segment or group.

22 C.F.R. § 171.12(b).

13. Under FOIA, agencies are required to determine whether to provide expedited processing, and to notify the requester of the decision, within 10 business days of the request.

5 U.S.C. § 552(a)(6)(E)(ii). See also 22 C.F.R. § 171.12(b).

14. Agencies must further provide expeditious consideration of administrative appeals of the denial of expedited processing. 5 U.S.C. § 552(a)(6)(E)(ii)(II).

15. A requestor is deemed to have exhausted administrative remedies if the agency fails to comply with the applicable time limit provisions. 5 U.S.C. § 552(a)(6)(C).

16. The district court of the United States where the requestor resides or has its principal place of business has jurisdiction to enjoin an agency from withholding agency records and to order the production of agency records improperly withheld, after determining the matter de novo. 5 U.S.C. § 552(a)(4)(B). An agency's action to deny a request for expedited processing or failure to respond in a timely manner to such a request are also subject to judicial review. 5 U.S.C. § 552(a)(6)(E)(iii).

FACTUAL ALLEGATIONS

17. On December 19, 2008, the U.S. Department of Homeland Security ("DHS") denied Haitian President Rene Preval's repeated requests that the United States extend Temporary Protected Status ("TPS") to Haitians in light of that country's devastation following a series of hurricanes and tropical storms. DHS stated that it reached this decision after carefully considering the recommendations of U.S. Citizenship and Immigration Services ("USCIS") and the U.S. Department of State. (See Exh. 1.)

18. The Government, however, did not make public the content of the very recommendations on which it claimed to have relied to deny protection to thousands of individuals in the United States facing deportation to Haiti, a position it has adhered to since.

19. On January 22, 2009, Plaintiff Florida Immigrant Advocacy Center (“FIAC”) sent written FOIA requests to USCIS/DHS and the Department of State for a copy of any and all records or documents containing agency recommendations as to whether the Government should afford TPS to Haitians. (See Exh. 2 and 3.)

20. On February 5, 2009, DHS acknowledged receipt of the request. DHS advised that it had identified 16 pages responsive to the request, 12 of which fell under the purview of USCIS, and 4 of which fell under the purview of DHS’ Office of Policy. (See Exh. 4.) (As described further below, USCIS and DHS’ Office of Policy ultimately released those 16 pages to Plaintiffs, and are therefore not named as Defendants in this suit. See ¶¶ 32, 36.)

21. In February 2009, representatives from the Department of State were also in communication with FIAC about the request directed to that agency. It was not until March 12, 2009, however, that the Department of State formally acknowledged receipt of the January 22, 2009 request. (See Exh. 5.)

22. To date, the State Department has not provided a substantive response to the request or produced a single responsive document.

23. On June 1, 2009—the first day of the new hurricane season—Plaintiff FIAC requested that the agencies grant expedited treatment to the FOIA request. That same day, the State Department’s FOIA office advised FIAC that its search for responsive records had

only just begun, even though the request had been pending since January 2009.

24. In its June 1, 2009 expedite request to the Department of State, FIAC identified the compelling need for the requested information based on the impending threat to the life and safety of Haitian nationals with the recent resumption of deportations to Haiti—which was only possible because of the Government’s refusal to extend temporary protection to Haitians based on agency recommendations not disclosed to the American public—and the urgency to disseminate the basis for the Government’s action to the public. (See Exh. 6.)

25. The request to expedite was supported by the Affidavit of Charu al-Sahli. Ms. al-Sahli cited several news reports which recently documented the urgency of the need for Haitian TPS, including: profound instability and life-threatening conditions in Haiti; the destruction of infrastructure that has resulted in hundreds of deaths; the devastation of the country’s food supply; the spread of disease and violence; widespread homelessness and inaccessibility in major cities; and the displacement of tens of thousands of citizens. Ms. al-Sahli also discussed media reports of the recent drowning off the coast of Florida of Haitians who vainly took to the high seas seeking safe haven from these disastrous conditions, which now threaten to be exacerbated by the deportation of thousands of Haitians who would otherwise be contributing to the stability and recovery of the Haitian economy through millions of dollars in remittances.

26. By letter dated June 9, 2009, the State Department denied the expedite request. (See Exh. 7.)

27. On July 8, 2009, Plaintiffs FIAC and Susana Barciela appealed the State Department's denial of the request to expedite, via fax and federal express. (See Exh. 8.)

28. Plaintiffs submitted additional information in support of the request, including copies of the articles previously cited describing the alarming situation in Haiti, recent letters from elected officials and community leaders highlighting the urgency of temporary protected status for Haitians, and the Declaration of Susana Barciela, attaching the press releases previously cited.

29. Plaintiffs identified the compelling need to obtain prompt access to the information on which the Government has relied to deny TPS to Haitians, which poses an imminent threat to the life and physical safety of Haitians and harms substantial humanitarian interests by depriving the public of the ability to know about and respond to the underlying bases for a policy that (1) endangers the life and safety of deportees by returning them to an unsafe and unstable environment; (2) further undermines Haiti's stability and security with an influx of deportees which that country is unable to absorb; (3) deprives Haitians of remittances from relatives in the United States which are essential to Haiti's economic recovery, stability and security; and (4) propagates the disastrous conditions in Haiti which propel desperate individuals to seek safe haven elsewhere, creating a risk to their life and safety at sea. Plaintiffs also identified the need to inform the public about the so far undisclosed bases for the federal Government's refusal to extend humanitarian protection to Haitians, so as to allow for a public response to the recommendations underlying that action.

30. Plaintiffs further highlighted the urgency of the matter by citing recent news reports. For example, the situation in Haiti has recently been described as a “hotbed of violence and squalor” as well as potentially “combustible,” already requiring thousands of U.N. peacekeepers to maintain order. *Hope for Haitians? Immigrants From the Storm-Ravaged Island Should Be Allowed to Stay in the United States*, The Washington Post, Mar. 30, 2009; *Impoverished Haiti Slips Further as Remittances Dry Up*, The Washington Post, Apr. 17, 2009. Heavy rains in the new storm season have already begun to claim lives and cause further evacuations. *Haiti: Last Chance For A New Start*, The Miami Herald, May 22, 2009. The State Department itself has warned Americans not to travel to Haiti given the “physical and economic devastation” in Haiti and the dangerous social instability for which there is no effective law enforcement or control.

31. To date, the State Department has not responded to the expedite appeal.

32. On August 12, 2009, DHS’ Office of Policy produced a 4-page memorandum dated October 8, 2008 in response to the request. (See Exh. 9.) That memorandum referenced several attachments not produced, including two that were marked as having the Department of State as their source. USCIS did not, however, produce the remaining 12 pages that had been identified as responsive to Plaintiffs’ request since February 5, 2009.

33. On August 14, 2009, Plaintiffs advised the U.S. Attorney’s Office of the intention to file suit against USCIS and the Department of State given those agencies’ continued failure to comply with the FOIA, despite considerable efforts on Plaintiffs’ part to obtain the requested records, including multiple inquiries.

34. On August 20, 2009, Payton Howard from the Department of State's FOIA Office contacted FIAC about the pending request. Mr. Howard stated that in May 2009, he forwarded the request to DHS, having been under the impression that Haitian President Rene Preval was an immigrant client of FIAC's, and that the FOIA request pertained to President Preval's having been denied temporary protected status in the United States.

35. On August 20, 2009, FIAC faxed Mr. Howard a copy of DHS' October 8, 2008 memorandum, which referenced the Department of State documents, to facilitate the Department's search for responsive documents.

36. On September 1, 2009, USCIS produced the 12 pages of responsive documents that had been identified on February 5, 2009, with portions redacted and referred to the Department of State. (See Exh. 10.)

37. To date, however, the Department of State still has not provided a substantive response to the request or produced a single responsive document.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

38. As Defendant has failed to comply with the 20-day statutory time limit governing responses to FOIA requests, Plaintiffs have exhausted their administrative remedies with respect to the January 22, 2009 request. 5 U.S.C. § 552(a)(6)(C)(i).

39. Plaintiffs have also exhausted all administrative remedies applicable to their June 1, 2009 request for expedited processing.

40. Defendant's failure to comply with the statutory time frame governing appeals of the denial of expedited processing satisfies any exhaustion requirement as to that claim.

5 U.S.C. § 552(a)(6)(C)(i).

CLAIMS FOR RELIEF

COUNT ONE

Failure to Disclose and Release Records

41. Plaintiffs reallege and incorporate paragraphs 1-40.

42. On January 22, 2009, Plaintiffs properly submitted a request to the Department of State for records that are public records subject to FOIA.

43. Defendant failed to determine within 20 business days of the FOIA request whether the agency would comply with the request and immediately notify Plaintiffs of the agency's decision, the reasons therefor, and appeal procedures for adverse determinations, all in violation of 5 U.S.C. § 552(a)(6)(A)(i).

COUNT TWO

Improper Denial of Expedited Processing

44. Plaintiffs reallege and incorporate paragraphs 1-43.

45. Defendant improperly denied Plaintiffs' June 1, 2009 expedite request, in violation of 5 U.S.C. § 552(a)(6)(E)(i)-(vi) and 22 C.F.R. § 171.12(b).

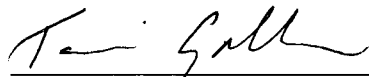
46. Defendant also failed to make an expeditious determination regarding Plaintiffs' July 8, 2009 appeal of the denial of the June 1, 2009 expedite request, in violation of 5 U.S.C. § 552(a)(6)(E)(ii)(II).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Assume jurisdiction over this matter;
- B. Order Defendant to disclose and release the requested records in their entirety and without further delay;
- C. Declare unlawful (1) Defendant's failure to respond to Plaintiffs' January 22, 2009 FOIA requests within the statutory time limitations; (2) Defendant's failure to disclose and release the requested records; (3) Defendant's denial of expedited processing; and (4) Defendant's failure to respond to Plaintiffs' July 8, 2009 appeal of the expedite denial;
- D. Award Plaintiffs reasonable attorneys' fees and other litigation costs in accordance with 5 U.S.C. § 552(a)(4)(E); and
- E. Grant Plaintiffs any other relief the Court deems just and proper.

Respectfully submitted,



Tania Galloni (Fla. Bar No: 619221)

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Attorneys for Plaintiffs

Secretary

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

December 19, 2008

His Excellency René Préval
President of the Republic of Haiti
Port-au-Prince, Haiti

Dear President Préval:

Thank you for your February 12, 2008 and October 6, 2008 letters to President George W. Bush, requesting a Temporary Protected Status (TPS) designation for Haiti, as a result of the devastation that Haiti has experienced due to Hurricanes Ike and Gustav and Tropical Storms Hannah, Fay, and Noel. Your letters were referred to the Department of Homeland Security (DHS) for response, as DHS is responsible for administering the TPS program.

I would like to express my deepest sympathy for the extraordinary hardships that your country has endured as a result of the recent storms. I am aware that hundreds have lost their lives, tens of thousands have been displaced, and tremendous damage has been caused to your country's infrastructure and agricultural resources.

I am pleased that DHS has been able to play an active role in providing assistance to Haitian nationals. Before I highlight some of the measures DHS has taken, I would like to address your request for a TPS designation for Haiti. My authority to designate a country (or a part thereof) for TPS is based upon narrow criteria outlined by the U.S. Congress in section 244 of the *Immigration and Nationality Act*, 8 U.S.C. § 1254a. Following the recent storms, DHS's U.S. Citizenship and Immigration Services (USCIS) initiated the process of evaluating country conditions in Haiti to prepare its recommendation regarding whether Haiti should be designated for TPS. DHS also consulted with other U.S. Government agencies, including the U.S. Department of State (DOS), which prepared its own recommendation for my consideration. I have evaluated the DOS and USCIS recommendations and all other relevant information on whether Haiti warrants a TPS designation. After very careful consideration, I have concluded that Haiti does not currently warrant a TPS designation.

I realize, however, that the effects of the recent storms on Haiti have been severe. Therefore, DHS has taken various actions to help mitigate the effects of the storms. For example, DHS's U.S. Coast Guard has provided direct humanitarian relief to Haiti. Following the storms, the Coast Guard delivered tons of humanitarian relief supplies to Haiti, including food, water, bed linens, medical supplies, hygienic items, and clothing.

DHS has also implemented a number of immigration-related measures to assist Haitian nationals who are currently in the United States. For example, USCIS has reminded Haitian nationals who are legally present in the United States of available short-term USCIS program flexibilities that

Plaintiff's Exhibit

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may allow them to remain in the United States temporarily. As detailed in the enclosed public announcement, these flexibilities for Non-Immigrants in Lawful Status and Current Parolees include:

- The opportunity to apply for an extension or change of non-immigrant status;
- The opportunity for students to seek employment authorization;
- The opportunity for expedited processing of applications for the above or for an application or petition filed for a service or benefit that is otherwise immediately available; and
- The opportunity to request an extension of parole if the person does not have a current immigration status but has been previously paroled into the United States.

Further, U.S. Immigration and Customs Enforcement (ICE), the DHS Component responsible for the removal of aliens from the United States, has temporarily delayed the removal of a number of Haitian nationals as a direct result of the recent storms. ICE will continue to monitor the situation in Haiti and will coordinate with your government regarding the removal of Haitian nationals from the United States.

Please know that DHS is committed to continuing to actively assist in Haiti's recovery from the recent storms. If I may be of further assistance, please contact my office or Larry Mizell, Director, Caribbean Affairs, in DHS's Office of International Affairs at (202) 282-8051.

Sincerely,



Michael Chertoff

A nonprofit
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FLORIDA IMMIGRANT ADVOCACY CENTER, INC.

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January 22, 2009

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U.S. Citizenship & Immigration Services
National Records Center, FOIA/PA Office
P. O. Box 648010
Lee's Summit, MO 64064-8010
Facsimile: (816) 350-5785

U.S. Department of Homeland Security
Privacy Office
Mail Stop 0550
245 Murray Lane, S.W.
Washington, DC 20528-0550
Facsimile: (703) 235-0443

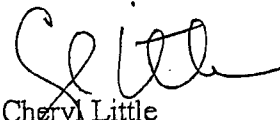
Re: Freedom of Information Act Request

Dear Sir or Madam:

This letter is to respectfully request, pursuant to the Freedom of Information Act, 5 U.S.C. 552, from the appropriate office copies of any and all records or documents in your possession containing the recommendation of the U.S. Citizenship and Immigration Services (USCIS) to Department of Homeland Security (DHS) Secretary Michael Chertoff regarding a Temporary Protected Status (TPS) designation for Haiti last year. Such a recommendation was referred to in the attached December 19, 2008 letter to René Préval, the President of Haiti, from Mr. Chertoff.

The Florida Immigrant Advocacy Center (FIAC) is a not-for-profit legal services agency. Please notify us if the records sought are so numerous that copying costs might be prohibitive. Please feel free to contact me at the address on this letterhead or (305) 573-1106 ext. 1001 or by e-mail at clittle@fiacfla.org should you have any questions regarding this request. I look forward to your timely response.

Regards,


Cheryl Little
Executive Director

Plaintiff's Exhibit

2

Secretary

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Washington, DC 20528



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Office of Information Programs and Services
A/ISS/IPS/RL
U. S. Department of State
Washington, D. C. 20522-8100
Facsimile: 202-261-8579


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Plaintiff's Exhibit

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U.S. Department of Homeland Security
Washington, DC 20528



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- The opportunity for students to seek employment authorization;
- The opportunity for expedited processing of applications for the above or for an application or petition filed for a service or benefit that is otherwise immediately available; and
- The opportunity to request an extension of parole if the person does not have a current immigration status but has been previously paroled into the United States.

Further, U.S. Immigration and Customs Enforcement (ICE), the DHS Component responsible for the removal of aliens from the United States, has temporarily delayed the removal of a number of Haitian nationals as a direct result of the recent storms. ICE will continue to monitor the situation in Haiti and will coordinate with your government regarding the removal of Haitian nationals from the United States.

Please know that DHS is committed to continuing to actively assist in Haiti's recovery from the recent storms. If I may be of further assistance, please contact my office or Larry Mizell, Director, Caribbean Affairs, in DHS's Office of International Affairs at (202) 282-8051.

Sincerely,



Michael Chertoff

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

Privacy Office, Mail Stop 0550

February 5, 2009

Ms. Cheryl Little
Executive Director
Florida Immigrant Advocacy Center, Inc.
3000 Biscayne Blvd, Suite 400
Miami, Florida 33137

Re: DHS/OS/PRIV 09-247

Dear Ms. Little:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), dated January 22, 2009, and seeking records related to the recommendations of the U.S. Citizenship and Immigration Services (USCIS) to Secretary Michael Chertoff regarding a Temporary Protected Status (TPS) designation for Haiti in 2008. Your request was received in this office on January 22, 2009.

During our search for responsive records, our office located 16 pages of records responsive to your request. Of those request, we found that 12 pages are under the purview of U.S. Citizenship and Immigration Services (USCIS). Therefore, I am transferring your request, along with those 12 responsive pages, to the FOIA Officer for USCIS, Jill Eggleston, for processing and direct response to you. You may contact that office in writing at U.S. Citizenship and Immigration Services, National Records Center, FOIA/PA Office, P.O. Box 648010, Lee's Summit, MO 64064-8010 or via telephone at 816-350-5570. The remaining 4 pages are under purview of the Office of Policy (PLCY). In addition, I am referring your request along with those 4 pages to the FOIA Point of Contact for PLCY, Sean McAfee, for processing and direct response to you. You may contact that office by writing to U.S. Department of Homeland Security, Office of Policy, Washington, D.C. 20528, via telephone at 202-282-8036, or via e-mail at plcy.execsec@dhs.gov.

If you need to contact this office again concerning your request, please refer to **DHS/OS/PRIV 09-247**. This office can be reached at 866-431-0486.

Sincerely,

A handwritten signature in black ink, appearing to read "Vania T. Lockett", written over a horizontal line.

Vania T. Lockett
Associate Director, Disclosure & FOIA Operations

Plaintiff's Exhibit

4



United States Department of State

Washington, D.C. 20520

MAR 12 2009

Case Number 200900732

Ms. Cheryl Little, Executive Director
Law Offices Florida Immigrant Advocacy Center, Inc.
3000 Biscayne Blvd., Suite 400
Miami, FL 33137

Dear Ms. Little:

This is in response to your Freedom of Information Act/Privacy Act (FOIA/PA) request, dated January 22, 2009, for copies of any and all records or documents containing the **recommendations of the Department of State to the Department of Homeland Security regarding a Temporary Protected Status (TPS) designation for Haiti for the year 2008**. The time period of your request is between January 1, 2008 and December 19, 2008.

We will begin the processing of your request based upon the information provided in your communication. We will notify you as soon as responsive material has been retrieved and reviewed.

We wish to advise you that the cut-off date for retrieving records is either the date you have given the Department by specifying a particular time frame, or the date the search initiated.

Fees

The Freedom of Information Act (FOIA) requires agencies to assess fees to recover the direct costs of processing requests, unless a fee waiver has been granted.

According to our regulations, by making a FOIA request, you have agreed to pay all applicable fees up to \$25 unless a fee waiver has been granted. You

Office of Information Programs and Services
U.S. Department of State, SA-2
Washington, DC 20522-8100
Website: www.foia.state.gov

Inquiries:
Phone: 1-202-261-8484
FAX: 1-202-261-8579
E-mail: FOIAStatus@state.gov

Plaintiff's Exhibit

- 2 -

may specify a willingness to pay a greater amount. If the estimated fees exceed this limit, you will be notified.

- ☐ You have stated your willingness to pay the fees incurred in the processing of this request up to \$_____.
- ☒ Please let us know if you are willing to pay the fees that will be incurred in the processing of your request. You may set a limit of the maximum amount that you wish to pay. Please be advised that, without an agreement to pay fees, your request will be processed without cost up to the required first 2 hours of search time (for all other requester category only) and duplication of the first 100 pages (for all other, media, educational and non-commercial scientific requester categories).

We will notify you of the costs incurred in processing your request as soon as the search for, and review of, any responsive documents have been completed.

Based upon the information that you have provided, we have placed you in the requester category checked below. This request will be processed in accordance with the fee schedule designated for that category (see 22 C.F.R. 171, enclosed).

- ☐ Commercial Use Requesters – Requires us to assess charges that recover the full direct costs of searching for, reviewing for release, and duplicating the record(s) sought.
- ☐ Educational Institution Requesters – Requires us to assess charges that recover the cost of duplicating the record(s) sought only, after the first 100 pages of duplication.
- ☐ Non-commercial Scientific Institution Requesters – Requires us to assess charges that recover the cost of duplicating the record(s) sought only, after the first 100 pages of duplication.
- ☐ Representatives of the News Media – Requires us to assess charges that recover the cost of duplicating the record(s) sought only, after the first 100 pages of duplication.

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- ☒ All Other Requesters – Requires us to assess charges that recover the full reasonable direct cost of searching for and duplicating the record(s) sought, after the first 100 pages of duplication, and the first two hours of search time.
- ☐ You have indicated your inclusion in a category different than the one indicated above. Please forward the information requested on the enclosed sheet titled “Requester Categories” to substantiate your inclusion in a particular category of requester.

Fee Waiver

- ☐ Your request for a fee waiver has been granted; therefore, your request will be processed at no charge to you.
- ☐ Based upon the information provided in your letter, your request for a fee waiver has been denied. If you wish to appeal this decision, you may write to the Chief, Requester Liaison Division, at the address given on the bottom of this page. Your appeal should address the points listed in the enclosed sheet titled “Requests for Fee Waivers.” Your appeal must be sent to us within 30 days from the date that you receive this letter.

Expedition

- ☐ After consideration of your request for expedited processing under the Department’s rules governing Freedom of Information Act requests, we have determined that your request does warrant expedited processing.

Although we cannot promise that the processing of your request will be completed by a specific date, it will be processed ahead of all other requests now pending with the Department, except for those other requests already determined to warrant expedition.

- ☐ Our published regulations regarding expedition, 22 C.F.R. 171.12(b), require a specific showing of a compelling need. Expeditious

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processing is granted only in the following situations: (1) imminent threat to the life or physical safety of an individual; (2) urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity and the information is urgently needed in that a particular value of the information would be lost if not disseminated quickly; (3) substantial humanitarian reasons; and (4) loss of substantial due process rights. Your request does not meet any of the established criteria. Regrettably, I must advise that you have not provided adequate justification for expedition. However, you may be assured that we will make every effort to process your request in as timely a manner as possible. For your convenience, I have enclosed a copy of the Department's expeditious processing criteria.

If you wish to appeal the denial of expedition, you may write to the Chief, Requester Liaison Division, at the address below, within 30 days of receipt of this letter.

Other Agency Material

- ☐ Some of the material that you seek appears to have been originated by another agency(ies). If you wish to contact the Freedom of Information/Privacy Office of that agency(ies), the address(es) can be found on the attached list.
- ☐ Some of the records you seek are no longer in the possession of the State Department. The majority of Department of State records (excluding passport and visa records) which are 25 years or older are transferred to the National Archives and Records Administration (NARA) in accordance with Title 22, Code of Federal Regulations, Part 171.6. Accordingly, requests for such records should be addressed to:

National Archives and Records Administration
8601 Adelphi Road, Room 311
College Park, MD 20740-6001

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- ☐ For pre-1925 passport records, and visa records dating 1910-1940, please contact:

Civil Records
National Archives & Records Administration
Washington, DC 20408


If you wish to review further information on our requirements for maintenance or disposal of records, please visit the following website: foia.state.gov/records.asp.

While we will make every effort to meet the time limits cited in the FOIA (5 U.S.C. § 552), unusual circumstances may arise for extending the time limit (see enclosure). We appreciate your patience in this matter.

If you have any questions, please do not hesitate to contact us at the number or address below. We can provide faster service if you include the case number of your request in your communications with us.

We are pleased to be of service to you.

Sincerely,


Patrick D. Scholl, Acting Chief
Requester Communications Branch
ISO 9001:2000 Certified

Enclosures: As stated.

§ 171.14 Fees to be charged—general.

The Department shall seek to charge fees that recoup the full allowable direct costs it incurs in processing a FOIA request. It shall use the most efficient and least costly methods to comply with requests for documents made under the FOIA. The Department will not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself. With the exception of requesters seeking documents for a commercial use, the Department will provide the first two hours of search time and the first 100 pages of duplication without charge. By making a FOIA request, the requester shall be considered to have agreed to pay all applicable fees up to \$25.00 unless a fee waiver has been granted.

(a) *Searches for responsive records.* If the Department estimates that the search costs will exceed \$25.00, the requester shall be so notified. Such notice shall offer the requester the opportunity to confer with Department personnel with the object of reformulating the request to meet the requester's needs at a lower cost. The request shall not be processed further unless the requester agrees to pay the estimated fees.

(1) *Manual searches.* The Department will charge at the salary rate (*i.e.*, basic pay plus 16 percent of basic pay) of the employee making the search.

(2) *Computer searches.* The Department will charge at the actual direct cost of providing the service. This

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2004 / Rules and Regulations
will include the cost of operating
the central processing unit
(CPU) for that portion of
operating time that is directly
attributable to searching for
records responsive to a FOIA
request and

operator/programmer salary
attributable to the search.

(b) *Review of records.* Only requesters who are seeking documents for commercial use may be charged for time spent reviewing records to determine whether they are releasable. Charges may be assessed for the initial review only; *i.e.*, the review undertaken the first time the Department analyzes the applicability of a specific exemption to a particular record or portion of a record.

(c) *Duplication of records.* Records shall be duplicated at a rate of \$.15 per page. For copies prepared by computer, such as tapes or printouts, the Department shall charge the actual cost, including operator time, of production of the tape or printout. For other methods of reproduction or duplication, the Department shall charge the actual direct costs of producing the document.

If the Department estimates that the duplication costs will exceed \$25.00, the requester shall be so informed. The request shall not be processed further unless the requester agrees to pay the estimated fees.

(d) *Other charges.* The Department shall recover the full costs of providing services such as those enumerated below:

(1) Certifying that records are true copies (*see* part 22 of this chapter); (2) Sending records by special methods such as express mail, overnight courier, *etc.*

(f) Payment shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the order of the Treasury of the United States and mailed to the Information and Privacy Coordinator.

(g) A receipt for fees paid will be given upon request. Refund of fees paid for services actually rendered will not be made.

**§ 171.15 Fees to be charged—
categories of requesters.**

Under the FOIA, there are four categories of requesters: Commercial use requesters, educational and noncommercial scientific institutions, representatives of the news media, and all other requesters. The fees for each of these categories are:

(a) *Commercial use requesters.* When the Department receives a request for documents for commercial use as defined in § 171.11(l), it will assess charges that recover the full direct costs of searching for, reviewing for release, and duplicating the record sought. Commercial use requesters are not entitled to two hours of free search time or 100 free pages of reproduction of documents. The Department may recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records (*see* § 171.16(b)).

(b) *Educational and non-commercial scientific institution requesters.* The Department shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must show that the request is being made as authorized by and under the auspices of a qualifying institution, as defined in § 171.11(m) and (n), and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a noncommercial scientific institution) research.

(c) *Representatives of the news media.* The Department shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in § 171.11(o), and the request must not be made for a commercial use. A request for records supporting

the news dissemination function of the requester shall not be considered to be a commercial use request.

(d) *All other requesters.* The Department shall charge requesters who do not fit into any of the categories above fees that recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge.

§ 171.11 Definitions.**Unusual Circumstances**

As used in this subpart, the following definitions shall apply:

(a) *Freedom of Information Act* or *FOIA* means the statute codified at 5 U.S.C. 552, as amended.

(b) *Department* means the United States Department of State, including its field offices and Foreign Service posts abroad;

(c) *Agency* means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the government (including the Executive Office of the President), or any independent regulatory agency;

(d) *Information and Privacy Coordinator* means the Director of the Department's Office of Information Programs and Services (IPS) who is responsible for processing requests for access to information under the FOIA, the Privacy Act, E.O. 12958, and the Ethics in Government Act;

(e) *Record* means all information under the control of the Department, including information created, stored, and retrievable by electronic means, regardless of physical form or characteristics, made in or received by the Department and preserved as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the Department or because of the informational value of the data contained therein. It includes records of other Government agencies that have been expressly placed under the control of the Department upon termination of those agencies. It does not include personal records created primarily for the personal convenience of an individual and not used to conduct Department business and not integrated into the Department's record keeping system or files. It does not include

records that are not already in existence and that would have to be created specifically to meet a request. However, information available in electronic form shall be searched and compiled in response to a request unless such search and compilation would significantly interfere with the operation of the Department's automated information systems.

(f) *Control* means the Department's legal authority over a record, taking into account the ability of the Department to use and dispose of the record as it sees fit, to legally determine the disposition of a record, the intent of the record's creator to retain or relinquish control over the record, the extent to which Department personnel have read or relied upon the record, and the degree

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to which the record has been
integrated into the Department's
record keeping system or files.

(g) *Direct costs* means those costs the Department incurs in searching for, duplicating, and, in the case of commercial requests, reviewing documents in response to a FOIA request. The term does not include overhead expenses.

(h) *Search costs* means those costs the Department incurs in looking for, identifying, and retrieving material, in paper or electronic form, that is responsive to a request, including pageby-page or line-by-line identification of material within documents. The Department shall attempt to ensure that searching for material is done in the most efficient and least expensive manner so as to minimize costs for both the Department and the requester.

(i) *Duplication costs* means those costs the Department incurs in copying

a requested record in a form appropriate for release in response to a FOIA request. Such copies may take the form of paper copy, microfiche, audio-visual materials, or machine-readable electronic documentation (e.g., disk or CD-ROM), among others.

(j) *Review costs* means costs the Department incurs in examining a record to determine whether and to what extent the record is responsive to the FOIA request and the extent to which it may be disclosed to the requester. It does not include costs of resolving general legal or policy issues that may be raised by a request.

(k) *Unusual circumstances*. As used herein, but only to the extent reasonably necessary to the proper processing of the particular request, the term "unusual circumstances" means:

- (1) The need to search for and collect the requested records from Foreign Service posts or other separate and distinct Department offices;
 - (2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request; or
 - (3) The need for consultation with another agency having a substantial interest in the determination of the request or among two or more components of the Department that have a substantial subject matter interest therein. Such consultation shall be conducted with all practicable speed.
- (l) *Commercial use request* means a request from or on behalf of one who requests information for a use or purpose that furthers the commercial, trade, or profit interest of the requester or the person on whose behalf the request is made. In determining whether a requester belongs within this category, the Department will look at the use to which the requester will put the information requested.

(m) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, or an institution of vocational education, that operates a program or programs of scholarly research.

(n) *Non-commercial scientific institution* means an institution that is not operated on a "commercial" basis, as that term is used in paragraph (l) of this section and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(o) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term news means information that is about current events or that would be of current interest to the public. News media include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase by the general public. Freelance journalists may be regarded as working for a news organization if they can demonstrate, such as by past publication, a likelihood of publication through a representative of the news media, even though not actually employed by it.

(p) *All other* means an individual or organization not covered by a definition in paragraphs (l), (m), (n), or (o) of this section.

FAX TRANSMISSION

LAW OFFICES

FLORIDA IMMIGRANT ADVOCACY CENTER

"A non-profit organization dedicated to protecting & promoting the basic human rights of immigrants of all nationalities."

3000 Biscayne Boulevard, Suite 400
Miami, Florida 33137
(305) 573-1106, ext. 1080
Fax: (305) 576-6273

To: Office of Information, DOS **Date:** June 1, 2009
Fax #: (202) 261-8579 **Pages:** 10, including cover
From: Cheryl Little, Executive Director
Subject: FOIA - EXPEDITE Request (200900732)

COMMENTS:

Original to follow by Federal Express.

Thank you for your attention to this matter.

Plaintiff's Exhibit

6

A non-profit
organization,
dedicated to
protecting
and promoting
the basic human
rights of immigrants
of all nationalities



FLORIDA IMMIGRANT ADVOCACY CENTER, INC.

3000 Biscayne Blvd. • Suite 400 • Miami, Florida 33137 • Tel: 305-573-1106 • Fax: 305-576-6273 • www.fiacfla.org

June 1, 2009

Patrick D. Scholl, Acting Chief
Office of Information Programs and Services
U.S. Department of State, SA-2
Washington, D.C. 20522-8100

Re: 200900732
EXPEDITE REQUEST

Dear Mr. Scholl:

Today marks the beginning of the 2009 Hurricane Season. Yet we have received no record responsive to our January 22, 2009 FOIA request for information related to the Government's decision not to extend Temporary Protected Status to Haitian nationals, whose country of origin has been ravaged by last year's hurricanes.

We now request expedited processing of the request in light of the compelling need to avert the increasing humanitarian crisis related to the recently resumed deportation of Haitian nationals to Haiti. Advocates for the Haitian community, such as FIAC, require the requested information in order to be able to respond to the Government's rationales for not extending humanitarian protection to Haitian nationals, who face an imminent threat to their life and physical safety if deported. We further request expedited processing based on the urgency to disseminate this information to the public, as the refusal to extend TPS to Haitians is critical federal government activity about which the public is entitled to be informed.

Attached please find the Declaration of Charu Al-Sahli attesting to the compelling need for the requested information, as well as a copy of the original request. Please feel free to contact me at (305) 573-1106, ext. 1001, or via email at clittle@fiacfla.org, should you have questions or require additional information.

Sincerely,

A handwritten signature in dark ink, appearing to read "Cheryl Little", is written over a horizontal line.

Cheryl Little
Executive Director

Enc.

Executive Director

Cheryl Little, Esq.

Board of Directors

Officers

Carl Goldfarb, Esq.
President

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Sr. Jeanne O'Laughlin

Eduardo Padron, PhD

Bishop Thomas Wenski

**DECLARATION OF CHARU NEWHOUSE AL-SAHLI IN SUPPORT OF
FOIA EXPEDITED PROCESSING REQUEST**

1. My name is Charu Newhouse al-Sahli. I am Statewide Director for the Florida Immigrant Advocacy Center ("FIAC") located at 3000 Biscayne Blvd., Suite 400, Miami, FL 33137. FIAC is a not for profit law firm with the mission to protect and promote the basic human rights of immigrants of all nationalities. As Statewide Director, I coordinate much of FIAC's advocacy in support of fair treatment of Haitian nationals, including interviewing Haitians in the community and in detention, interviewing their family members, and researching country conditions in Haiti.
2. It is urgent for the community at large to be informed about the reasons that the U.S. Government has not granted Temporary Protected Status ("TPS") to Haitians in the United States, even though Haiti has been ravaged by natural disasters and lacks the basic infrastructure to safely absorb an influx of deportees. The public, including the Haitian community in the United States, needs to know the government's basis for denying TPS to Haitians in order to respond to this humanitarian crisis effectively.
3. The public's concern with protection of Haitian nationals in the United States is already evidenced by extensive media coverage, editorial support, and coordinated efforts by non-governmental organizations to reach out to the Administration through sign-on letters, meetings, and call-in days. See, e.g. Editorial, "'Saint Maverick' defended the poor," *Miami Herald*, May 29, 2009; Editorial "Can Haiti itself be rescued?" *Palm Beach Post*, May 21, 2009; Editorial "Haiti: Last chance for a new start," *Miami Herald*, May 22, 2009; Op-ed, "Haiti deserves TPS designation," by Bishop Thomas Wenski, *Miami Herald*, April 18, 2009; Mary Beth Sheridan, "Impoverished Haiti Slips Further as Remittances Dry Up," *Washington Post*, April 17, 2009; Mary Beth Sheridan, "Impoverished Haiti Slips Further as Remittances Dry Up," *Washington Post*, April 17, 2009; Editorial, "Let the Haitians stay," *Chicago Tribune*, April 16, 2009; Edith Lederer, "Haiti's hurricanes caused \$1 billion in damage," *Associated Press*, April 6, 2009; Editorial, "Hope for Haitians? Immigrants from the storm-ravaged island should be allowed to stay in the United States," *Washington Post*, March 30, 2009; Editorial, "We think: Mass deportations of Haitians isn't the answer," *Orlando Sentinel*, March 7, 2009; "Haitians facing deportation look to Obama for help,"

Institute for Southern Studies, February 20, 2009; "A Double Standard? - Thousands of Haitians Face Deportation," *CaribWorldNews.com*, February 17, 2009; Op-ed, "Deportations slide under Obama's radar," by Myriam Marquez, *Miami Herald*, January 28, 2009; "Haiti at a crossroads as donations dry up and upheaval looms," by Jacqueline Charles, *Miami Herald*, January 15, 2009.

4. FIAC has more than a decade of expertise in matters affecting Haitian immigrants in the United States, and is widely sought out as an expert to comment on these issues. FIAC conducts broad community outreach to Haitians and several FIAC staff have radio programs, including one in Haitian Creole. FIAC actively engages in disseminating information to the public through educational presentations, press conferences, testimony to Government entities, and published reports. In recent months, FIAC has issued numerous press releases, fact sheets, and urgent actions regarding the deportation of Haitians to a devastated and unsafe country. FIAC News Release, "Pulitzer Photos Show Haiti's Desperate Need," April 21, 2009; FIAC Fact Sheet, "Fact Check: Bogus Threat of 'Mass Exodus' from Haiti," March 6, 2009; FIAC Urgent Action, "Stop the Deportations Now! Grant Haitians Temporary Protected Status," March 5, 2009; FIAC News Release, "ICE Grants Reprieve to Haitian Mother of Sick Child, Advocates Send Letter to President Obama," February 10, 2009; FIAC News Release, "Secretary Napolitano: Grant Haitians a Stay of Deportation," January 26, 2009; FIAC Urgent Action, "Call for TPS," January 22, 2009.
5. FIAC and the community it serves continue to be deeply concerned about the government's refusal to extend Temporary Protected Status to Haitian nationals facing deportation given the life-threatening conditions there in the wake of the four killer storms that devastated the country in 2008.
6. Hurricanes Gustav and Ike and Tropical Storms Fay and Hanna ravaged Haiti, killing 800 people. Floods and mudslides wiped out most of the food crops and millions face the specter of acute hunger. Meanwhile, malaria and other diseases are spreading. Eight key bridges collapsed during the storms and roads were turned into lakes. The World Bank assessed storm damage at nearly one billion dollars, and Haiti's economy contracted by 15 percent in the aftermath. This is the equivalent of eight to ten Hurricane Katrinas hitting the United

States in the same month. Both the UN mission and the Haitian government have been overwhelmed by the scale of the disasters, according to the United Nations' special envoy to Haiti. The United Nations called it "the worst disaster to hit Haiti in 100 years." See International Federation of the Red Cross, "Haiti: Hurricane Season 2008," December 2008 (available at: <http://www.ifrc.org/docs/appeals/08/MDRHT005rev02.pdf>); International Crisis Group, "Haiti 2009: Stability at Risk," March 3, 2009; UN News Service, Appeal for hurricane relief in Haiti badly under-funded, UN aid chief says," October 27, 2008 (available at: <http://www.un.org/apps/news/story.asp?NewsID=28729&Cr=haiti&Cr1=hurricane#>); Doctors Without Borders Press Release "Haiti's Hurricane Victims Facing Homelessness and Food Shortages," October 13, 2008; Marc Lacey, "Meager living of Haitians wiped out by storms," *New York Times*, September 11, 2008.

7. Haiti's third largest city, Gonaives, was rendered uninhabitable with the homes of more than 300,000 people destroyed in that city alone. Much of the city remains encased in mud today. Other cities have been isolated by washed-out roads and access remains difficult. See, e.g., Jacqueline Charles, "Storm-weary Haiti braces for the rain," *Miami Herald*, May. 31, 2009; Corey Flintoff, "Buried' Haitian City Braces For New Storm Season," *NPR All Things Considered*, May 19, 2009.
8. Before the storms hit, Haiti was already on the brink of famine that sparked deadly riots when an estimated 2.3 million Haitians had "fallen into food insecurity," according to the U.S. Agency for International Development. Prices for staple foods increased more than 40% and have increased even more since the storms. International donor support is waning, and the U.N. World Food Program may be forced to end its emergency food distributions because an emergency appeal has not raised the needed \$108 million. See, e.g., World Food Program Haiti Crisis Page available at <http://www.wfp.org/countries/haiti> (last visited on May 29, 2009); International Crisis Group, "Haiti 2009: Stability at Risk," March 3, 2009; U.S. Agency for International Development, USAID Press Release, "USAID Administrator Announces \$9 million in Aid to Haiti," September 16, 2008.

9. The UN independent expert on the situation of human rights in Haiti, Michel Forst, said on February 27, 2009 that he was deeply concerned by reports that the U.S. Department of Homeland Security, and its Immigration and Customs Enforcement agency, were planning to deport tens of thousands of Haitian immigrants. Forst said he had sent a letter to the Secretary of Homeland Security urging the U.S. Government to reconsider this decision in the light of the physical and financial damage inflicted on Haiti when it was struck by successive hurricanes last August. According to a recent evaluation cited by the Secretary-General's Special Representative in Haiti, Hedi Annabi, the hurricanes "comprehensively destroyed what little infrastructure there was." See UN News Service, "UN expert urges US not to deport thousands back to hurricane-ravaged Haiti," March 6, 2009 (available at: <http://www.un.org/apps/news/story.asp?NewsID=30106&Cr=haiti&Cr1=hurricane#>).
10. On January 28, 2009, the U.S. State Department issued a travel warning to Haiti---which remains in effect---advising Americans to defer non-essential travel until further notice due to security issues and political and economic conditions in Haiti that precipitated civil unrest. See U.S. State Department Travel Warning: Haiti (current as of May 29, 2009) available at: http://travel.state.gov/travel/cis_pa_tw/tw/tw_917.html. The warning states in part:

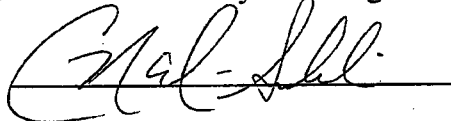
In the aftermath of the storms, eight of the country's nine departments reported significant physical and economic devastation. The storm damage came on the heels of the civil unrest in April 2008. Conditions in Haiti may occasionally limit Embassy assistance to American citizens to emergency services....

The absence of an effective police force in many areas of Haiti means that, when protests take place, there is potential for looting, the erection of intermittent roadblocks set by armed protestors or by the police, and an increased possibility of random crime, including kidnapping, carjacking, home invasion, armed robbery and assault.... The lack of civil protections in Haiti, as well as the limited capability of local law enforcement to resolve kidnapping cases, further compounds the element of danger surrounding this trend.

11. The U.S. Government's refusal to grant TPS to Haitians is an increasingly urgent concern given the resumption of deportations to Haiti on April 15, 2009. FIAC was alerted to the U.S. chartered deportation flight on April 15, 2009 by Haitians who contacted FIAC from detention. Detainees' reports were confirmed by reporters on the ground in Haiti. See Amy Bracken, "Little Help for Haitian Deportees," PRI's The World, May 4, 2009 (available at <http://www.theworld.org/node/26124>).
12. Some 30,000 Haitians have outstanding final orders of deportation in the United States and could face imminent removal. See ICE Information: Haitian Removals Email from Andrew Straight, National Community Outreach Program, Office of Policy, U.S. Immigration and Customs Enforcement, February 27, 2009. Given the disastrous conditions in Haiti, the failure to grant Temporary Protected Status to Haitian nationals constitutes an imminent threat to the life and physical safety of thousands of Haitians in the United States facing deportation.

I, Charu Newhouse al-Sahli, declare under penalty of perjury that the foregoing statement is true and correct to the best of my knowledge.

Signed:



Dated:

6/1/09

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January 22, 2009

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Office of Information Programs and Services
A/ISS/IPS/RL
U. S. Department of State
Washington, D. C. 20522-8100
Facsimile: 202-261-8579

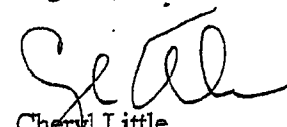
Re: Freedom of Information Act Request

Dear Sir or Madam:

This letter is to respectfully request, pursuant to the Freedom of Information Act, 5 U.S.C. 552, from the appropriate office copies of any and all records or documents in your possession containing the recommendation of the Department of State to the Department of Homeland Security regarding a Temporary Protected Status (TPS) designation for Haiti last year. Such a recommendation was referred to in the attached December 19, 2008 letter to René Préval, the President of Haiti, from Michael Chertoff, DHS Secretary.

The Florida Immigrant Advocacy Center (FIAC) is a not-for-profit legal services agency. Please notify us if the records sought are so numerous that copying costs might be prohibitive. Please feel free to contact me at the address on this letterhead or (305) 573-1106 ext. 1001 or by e-mail at clittle@fiacfla.org should you have any questions regarding this request. I look forward to your timely response.

Regards,


Cheryl Little
Executive Director

Secretary

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

December 19, 2008

His Excellency René Préval
President of the Republic of Haiti
Port-au-Prince, Haiti

Dear President Préval:

Thank you for your February 12, 2008 and October 6, 2008 letters to President George W. Bush, requesting a Temporary Protected Status (TPS) designation for Haiti, as a result of the devastation that Haiti has experienced due to Hurricanes Ike and Gustav and Tropical Storms Hannah, Fay, and Noel. Your letters were referred to the Department of Homeland Security (DHS) for response, as DHS is responsible for administering the TPS program.

I would like to express my deepest sympathy for the extraordinary hardships that your country has endured as a result of the recent storms. I am aware that hundreds have lost their lives, tens of thousands have been displaced, and tremendous damage has been caused to your country's infrastructure and agricultural resources.

I am pleased that DHS has been able to play an active role in providing assistance to Haitian nationals. Before I highlight some of the measures DHS has taken, I would like to address your request for a TPS designation for Haiti. My authority to designate a country (or a part thereof) for TPS is based upon narrow criteria outlined by the U.S. Congress in section 244 of the *Immigration and Nationality Act*, 8 U.S.C. § 1254a. Following the recent storms, DHS's U.S. Citizenship and Immigration Services (USCIS) initiated the process of evaluating country conditions in Haiti to prepare its recommendation regarding whether Haiti should be designated for TPS. DHS also consulted with other U.S. Government agencies, including the U.S. Department of State (DOS), which prepared its own recommendation for my consideration. I have evaluated the DOS and USCIS recommendations and all other relevant information on whether Haiti warrants a TPS designation. After very careful consideration, I have concluded that Haiti does not currently warrant a TPS designation.

I realize, however, that the effects of the recent storms on Haiti have been severe. Therefore, DHS has taken various actions to help mitigate the effects of the storms. For example, DHS's U.S. Coast Guard has provided direct humanitarian relief to Haiti. Following the storms, the Coast Guard delivered tons of humanitarian relief supplies to Haiti, including food, water, bed linens, medical supplies, hygienic items, and clothing.

DHS has also implemented a number of immigration-related measures to assist Haitian nationals who are currently in the United States. For example, USCIS has reminded Haitian nationals who are legally present in the United States of available short-term USCIS program flexibilities that

www.dhs.gov

may allow them to remain in the United States temporarily. As detailed in the enclosed public announcement, these flexibilities for Non-Immigrants in Lawful Status and Current Parolees include:

- The opportunity to apply for an extension or change of non-immigrant status;
- The opportunity for students to seek employment authorization;
- The opportunity for expedited processing of applications for the above or for an application or petition filed for a service or benefit that is otherwise immediately available; and
- The opportunity to request an extension of parole if the person does not have a current immigration status but has been previously paroled into the United States.

Further, U.S. Immigration and Customs Enforcement (ICE), the DHS Component responsible for the removal of aliens from the United States, has temporarily delayed the removal of a number of Haitian nationals as a direct result of the recent storms. ICE will continue to monitor the situation in Haiti and will coordinate with your government regarding the removal of Haitian nationals from the United States.

Please know that DHS is committed to continuing to actively assist in Haiti's recovery from the recent storms. If I may be of further assistance, please contact my office or Larry Mizell, Director, Caribbean Affairs, in DHS's Office of International Affairs at (202) 282-8051.

Sincerely,



Michael Chertoff



United States Department of State

Washington, D.C. 20520

Case # 200800732

Ms. Cheryl Little
Florida Immigrant Advocacy Center Inc.
3000 Biscayne Blvd Suite 400
Miami FL 33137

JUN - 9 2009

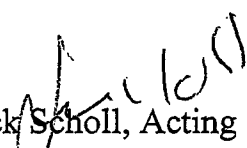
Dear Ms. Little:

This is in response to your fax of June 1 2009, in which you requested expeditious handling of your request for documents pertaining to the Department of State's recommendation to the Department of Homeland security regarding Temporary Protected Status for Haiti in 2008. 200800732.

Our published regulations regarding expedition, 22 CFR 171.12 (b), require a specific showing of a compelling need. Expeditious processing is granted only in the following situations: 1) imminent threat to the life or physical safety of an individual, 2) urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity and the information is urgently needed in that a particular value of the information would be lost if not disseminated quickly, 3) substantial humanitarian reasons, and 4) loss of substantial due process rights. Your request does not meet any of the established criteria. Regretfully, I must advise that you have not provided adequate justification for expedition. For your convenience, I have enclosed a copy of the Department's expeditious processing criteria.

If you wish to appeal the denial of expedition, you may write to Mr. Patrick Scholl, Chief, Requester Liaison Division, at the address below within 30 days of receipt of this letter.

If you have any questions, please do not hesitate to contact us. We can provide faster service if you include the case number of your request in your communications with us.


[Patrick Scholl, Acting Chief]
Requester Communications Branch

Enclosures: As stated.

Expeditious Processing Information Sheet

Expedited processing shall be granted to a requester after the requester requests such and demonstrates a compelling need for the information. A compelling need is deemed to exist where the requester can demonstrate one of the following:

1. **A Compelling Need** means that the failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.
2. **A Compelling Need** means that the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity. An individual primarily engaged in disseminating information to the public. Representatives of the news media would normally qualify; however, other persons must demonstrate that their primary activity involves publishing or otherwise disseminating information to the public, not just to a particular segment or group.
 - (a) **Urgently Needed** means that the information has a particular value that will be lost if not disseminated quickly. Ordinarily this means a breaking news story of historical interest only, or information sought for litigation or commercial activities would not qualify nor would a news media publication or broadcast deadline unrelated to the news breaking nature of the information.
 - (b) **Actual or Alleged Federal Government Activity.** The information concerns some actions taken, contemplated, or alleged by or about the Government of the United States, or one of its components or agencies, including the Congress.
3. **Substantial Due Process** rights of the requester would be impaired by the failure to process immediately; or
4. **Substantial Humanitarian** concerns would be harmed by the failure to process immediately.

A demonstration of compelling need by a requester shall be made by a statement certified by the requester to be true and correct to the best of their knowledge.

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July 8, 2009

Via Fax and Federal Express

Patrick D. Scholl, Chief
Requestor Liaison Division
Office of Information Programs and Services
U.S. Department of State, SA-2
Washington, D.C. 20522-8100

Re: 200900732 - APPEAL OF EXPEDITE DENIAL

Dear Mr. Scholl:

In accordance with 8 C.F.R. § 171.50, we hereby appeal your June 9, 2009 denial of our June 1, 2009 request to expedite the processing of the above request. To avoid any confusion, please note that your denial letter incorrectly listed the Case Number as beginning with "2008" rather than "2009." Per your instructions, we direct this appeal to you at the above address.

Background

On December 19, 2008, the U.S. Department of Homeland Security ("DHS") denied Haitian President Rene Preval's repeated requests that the United States extend Temporary Protected Status ("TPS") to Haitians in light of the country's devastation as a result of a series of hurricanes and tropical storms during 2008. DHS stated that it reached this decision after carefully considering the recommendations of U.S. Citizenship and Immigration Services ("USCIS") and the U.S. Department of State. The Government, however, has not made public the content of the very recommendations on which it claims to have relied to deny protection to thousands of individuals in the United States facing deportation to Haiti, a position it has adhered to since that time.

FOIA Request

On January 22, 2009, we formally asked your office to produce the documents containing the Department of State's recommendation, pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 *et seq.* Your office did not acknowledge receipt of this request until March 12, 2009. More than five months have now passed, and we have received no response to our request.

Plaintiff's Exhibit

8

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Expedite Request

On June 1, 2009, we requested that the Department of State expedite its processing of our request given the start of the 2009 hurricane season. We also identified the compelling need to avert the impending humanitarian crisis related to the resumed deportation of Haitian nationals to Haiti—which was only possible because of the Government’s refusal to extend temporary protection to Haitian nationals based on agency recommendations not disclosed to the American public.

We explained that FIAC requires access to this information in order to inform the public about the Government’s actions and allow for an effective response to the agency recommendations underlying the denial of humanitarian protection to Haitian nationals, who face an imminent threat to their life and physical safety if deported. Our request to expedite was supported by the Declaration of Charu Newhouse Al-Sahli, which amply demonstrated the compelling need for the requested information to be publicly disclosed.

On June 9, 2009, your office denied our June 1, 2009 request without explanation.

Appeal - Compelling Need

The Freedom of Information Act requires federal agencies to promulgate regulations providing for the expediting of requests for information “in cases in which the person requesting the records demonstrates a compelling need [and] in other cases determined by the agency.” 5 U.S.C. § 552(6)(E)(i).

The statute defines “compelling need” as a showing either:

- (I) that a failure to obtain requested records on an expedited basis under this paragraph could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or
- (II) with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

Id. § 552(6)(E)(v).

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The Department of State's FOIA regulations provide that a "compelling need" exists where:

- (1) Failure to obtain requested information on an expedited basis could reasonably be expected to: Pose an imminent threat to the life or physical safety of an individual; impair substantial due process rights; or harm substantial humanitarian interests.
- (2) The information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity. News media requesters would normally qualify; however, other persons must demonstrate that their primary activity involves publishing or otherwise disseminating information to the public, not just a particular segment or group.

22 C.F.R. § 171.12(b).

Our request demonstrates a compelling need to know the purported bases for the Government's refusal to extend humanitarian protection to Haitians based on both prongs. In addition to Ms. Al-Sahli's declaration already submitted in support of this request, we add for your convenience hard copies of a series of articles she cited therein (in reverse chronological order), recent letters from elected officials and community leaders highlighting the urgency of the issue, and the Declaration of Susana Barciela (attaching press releases discussed by Ms. Al-Sahli).

The failure to expeditiously obtain access to the information on which the Government has relied to deny TPS to Haitians poses an imminent threat to the life and physical safety of Haitians and harms substantial humanitarian interests by depriving the public of the ability to know about and respond to the underlying bases for a policy that (1) endangers the life and safety of deportees by returning them to an unsafe and unstable environment; (2) further undermines Haiti's stability and security with an influx of deportees which that country is unable to absorb; (3) deprives Haitians of remittances from relatives in the United States which are essential to Haiti's economic recovery, stability and security; and (4) propagates the disastrous conditions in Haiti which propel desperate individuals to seek safe haven elsewhere, creating a risk to their life and safety at sea.

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The requested information is also urgently needed by Ms. Barciela, who is primarily engaged in disseminating information to the public about immigration policy matters. Ms. Barciela requires access to this information in order to inform the public about the so far undisclosed bases for the federal Government's refusal to extend humanitarian protection to Haitians.

As Ms. Al-Sahli has stated, several news reports have recently documented the urgency of the need for Haitian TPS, including profound instability and life-threatening conditions in Haiti; the destruction of infrastructure that has resulted in hundreds of deaths; the devastation of the country's food supply; the spread of disease and violence; widespread homelessness and inaccessibility in major cities; and the displacement of tens of thousands of citizens. The media have also documented the recent drowning off the coast of Florida of Haitians who vainly took to the high seas seeking safe haven from these disastrous conditions, which now threaten to be exacerbated by the deportation of thousands of Haitians who would otherwise be contributing to the stability and recovery of the Haitian economy through millions of dollars in remittances.

The situation in Haiti has recently been described as a "hotbed of violence and squalor" as well as potentially "combustible," already requiring thousands of U.N. peacekeepers to maintain order. *Hope for Haitians? Immigrants From the Storm-Ravaged Island Should Be Allowed to Stay in the United States*, The Washington Post, Mar. 30, 2009; *Impoverished Haiti Slips Further as Remittances Dry Up*, The Washington Post, Apr. 17, 2009. Heavy rains in the new storm season have already begun to claim lives and cause further evacuations. *Haiti: Last Chance For A New Start*, The Miami Herald, May 22, 2009. The State Department itself warns Americans not to travel to Haiti given the "physical and economic devastation" in Haiti and the dangerous social instability for which there is no effective law enforcement or control.

Based on our demonstration of a compelling need for the requested information, we again ask that you grant expedited treatment. Please feel free to contact us at (305) 573-1106 should you have questions or require additional information.

Sincerely,


Cheryl Little
Executive Director

Enc.

NEWS ARTICLES

The Miami Herald

Posted on Sun, May. 31, 2009

Storm-weary Haiti braces for the rain

BY JACQUELINE CHARLES
jcharles@MiamiHerald.com

Joicilia Mercius, a frail-looking woman who lives in a hillside tent city of canvas and soiled bedsheets, feels a sense of dread at even the slightest hint of rain.

First her heart leaps. Then her mind flashes back to last September when she grabbed hold of her four children and trudged through waist-high water that swallowed her humble home and buried it in mud.

"If we get the same kinds of storms we had last year, I will die. I've accepted that," said Mercius, 56, among more than 400 families living in a sprawling encampment on the eastern edge of this flood-prone Haitian city.

"I can't do it," she said. "I don't have the strength to run to the hills."

As the Atlantic hurricane season kicks off Monday, Mercius and countless other desperately poor Haitians fear an environmentally fragile Haiti is no more ready to weather this season's storms than last year, when a succession of tropical storms and hurricanes in a span of 30 days killed almost 800, left hundreds of thousands homeless and caused \$1 billion in damage.

"I can't say we are ready. But we are better prepared than we were last year," said Haitian Interior Minister Paul Antoine Bien-Aimé. "The government has made more of an effort . . . to control the risks from flooding, because we learned a lot."

In the past few weeks, millions of dollars worth of heavy machinery has been dispatched to vulnerable cities like Gonaïves in the northwest, Les Cayes in the southwest and the small town of Cabaret, just north of Port-au-Prince, where the bodies of dozens of children washed up following the fourth storm, Hurricane Ike.

The Bureau of Civil Protection, led by the country's lead disaster coordinator, recently launched a campaign asking the question, "Are We Ready?" And volunteers in several communities have been armed with bullhorns to alert of looming disasters.

"We are making a huge effort to try and develop the kind of culture we want to have," said coordinator Dr. Yolène Surena, who concedes the plan is far from perfect but a good start. "We want people to understand they live in a country at risk, and if they live in a high-risk country they need to have a certain kind of attitude."

Heavy rains this year already have killed at least 11 people, and left more than 600 newly homeless.

Rains in the southeast washed out a critical road that a U.N. World Food Program (WFP) truck used to deliver food to Baie d'Orange, where dozens of children died last year from storm-related

malnutrition. WFP is now trying to find other means of reaching the isolated community.

In the Artibonite Valley, where barren mountain slopes surrounding Gonaives have left the city vulnerable to lethal flash floods, recent rains triggered such a panic that residents ran to rooftops and into the hills. The city, which sits like a clogged bathtub, has the added problem of bad drainage and accumulated earth that quickly turns to mud.

"The season could be very tough," said Myrta Kaulard, the WFP representative. "Because people and infrastructure have not recovered yet from last year and are more vulnerable, a small rain can have the impact of a storm."

That reality is not lost on the people of Gonaives, where eight months after Tropical Storm Hanna, bulldozers are still trying to remove millions of cubic millimeters of mud. The city is one of several that authorities have targeted for intense hurricane preparation. The focus has turned the city into an oversized construction pit with workers feverishly trying to unclog canals blocked with mud and debris, repair three major drains and expand and deepen miles of the La Quinte River, the principal waterway that runs through the city.

Haitian President René Préval traveled to the city three times in recent days to oversee the work. Among his concerns: the La Quinte River, where dredging only recently began and has been hobbled by a dispute between Haitian authorities and the international partners also involved in the work. Critics say the European Union and U.S. Agency for International Development, which agreed to finance a portion of the river's rehabilitation, are taking too long to get the job done.

Meanwhile, donors have expressed their own concerns, including whether a government-run construction outfit known as CNE is qualified to take on such huge infrastructure assignments. They complain that while the outfit has the heavy machinery -- the government bought \$90 million worth after the storms -- vehicles are always lacking gas, and there is not enough technical expertise.

Frustrated, the government recently directed CNE to begin work on the 1.5 mile stretch of the river that CHF International was supposed to begin work on under the \$16 million bid it won from USAID.

CHF Country Director Alberto Wilde said the delay was because of a required environmental impact study, and by the bidding process.

"People tend to rush into things. They want to see action but sometimes the preparation takes longer than the execution itself," Wilde said. Wilde and others say that the decision to widen the river to 40 meters instead of the 25 meters is contrary to the recommendation of a July 2008 EU study.

"There are environmental implications when you do anything with rivers," said Alex Deprez, USAID acting deputy mission director. "The work needs to be done based on sound environmental and engineering studies, and it takes time to do work that will stand the test of the next storm season."

Haiti's Agriculture Minister Joanas Gué said the decision to widen the river is based on Haiti's own study. "What is important for us is protecting lives and investments, and limiting the risks," Gué said. "CHF had money in their hands and up until now, they are not ready. We have no choice but to take the lead in Gonaives. Any little rain, people put their suitcases on their heads and start to run."

Still, Haiti is treating the symptoms of the problem rather than the cause -- its deforested mountains.

"After the river has been high and some houses have been flooded, that is when you see them coming with their bulldozers to try and do something, after the damage has been done," Gonaives Pastor Michel Morisset said.

Morisset's Mission Evangelique Eben-Ezer church sits just off the national road, still buried underneath a newly formed lake, forcing visitors to take a grueling, 25-minute detour in or out of the city. Across the street from the church, three dozen families are living in tents.

"It's not safe," Morisset said of the blue tarps he recently got upgraded with a zinc ceiling and concrete slab floor. "But it's a lot better than the [other] tents. It's not anything close to what the people need to feel safe. It's not a home."

Further inland, dozens of residents complain that they are living in misery.

"Hunger is killing us, misery is killing us, the rains are soaking us," said Antoinette Paul, a 48-year-old who had to scatter her eight children around town. "They say they would like to do this for us, discussions go back and forth but nothing is resolved. They say we don't have any problems. That is a lie," she said.

"You are sleeping, scorpions are biting you; snakes are crawling on top of you. The misery is just too much for us."

Bien-Aimé said everyone living in temporary shelters was given money by the government to return home. The state, he said, can't afford to keep taking care of storm victims, but added those still living in tents will be relocated.

"They all have pretty words, but we haven't seen any action on behalf of the people," said Osnel Clairilus, 20, adding that they last received potable water in February from a government truck. "Giving us a few dollars doesn't solve the problem. What we need is a place to live," he said. "We have children we have to clothe and feed and send to school."

'Saint Maverick' defended the poor - 05/29/2009 - MiamiHerald.com

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The Miami Herald

Posted on Fri, May. 29, 2009

'Saint Maverick' defended the poor

The Rev. Gérard Jean-Juste, the firebrand Roman Catholic priest who earned the moniker "Saint Maverick" for standing up to the White House, church officials and local leaders in an effort to help his Haitian people, was as beloved as he was controversial.

His unexpected death Wednesday comes at a time when South Florida's Haitian community continues to be in the cross-hairs of U.S. immigration policy. They are correct to push President Obama's administration to grant temporary protected status so that undocumented Haitians are not forced to return to a country still struggling to rebuild after four devastating storms last summer.

Rev. Jean-Juste was controversial in his defense of ousted Haitian President Jean-Bertrand Aristide and the president's Fanmi Lavalas Party even when it became clear that the governance in Haiti had collapsed into gang warfare and that the best way to help Haitians restore democracy was to hold new elections.

A believer in liberation theology, Rev. Jean-Juste riled many who questioned the Marxist leanings of that theology. But no one should question his unwavering support for the poor and defenseless. He gave voice to those who were voiceless in this community during a most tumultuous time.

In 1971, Rev. Jean-Juste became the first Haitian ordained by the Catholic Church in the United States, just a year before the first group of desperate Haitians began arriving in rickety boats on our shores.

When U.S. policy shifted to treat Haitians as illegal immigrants even though many were fleeing political persecution just as were the Cubans and Vietnamese, Rev. Jean-Juste organized protests and brought many non-Haitians to his cause. By 1978, when he was running the Haitian Refugee Center in Liberty City, he proclaimed the U.S. immigration policy's intransigence toward Haitians and the nation's silence to their struggle "our Holocaust."

It is a testament to Rev. Jean-Juste's three decades of hard work in this community that so many new Haitian-American leaders have emerged to carry on his call for fairness. Godspeed, Saint Maverick.

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5/22/09 MIAIHDA20

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May 22, 2009

Section: A

Haiti : Last chance for a new start
OUR OPINION: Leaders must show political will to improve their country

The appointment of former President Bill Clinton as a special United Nations envoy to Haiti may be the best thing to happen to that impoverished Caribbean nation in years. With his star power and global influence, Mr. Clinton can attract support for worthy projects, just as he did for the victims of Hurricane Katrina and the Asian tsunami of December 2004.

Have no doubt -- Haiti deserves urgent attention.

The recent drowning of Haitians in an immigrant-smuggling incident off Boynton Beach is an indication of the level of desperation that rules the lives of people in that country and compels them to risk all to seek a better life elsewhere.

Hit with four storms in less than 30 days last year, Haitians have barely begun to recover, but already the new storm season is upon them. Heavy rains this week caused some drownings and the evacuation of many residents from hapless Gonaives, where the worst of last year's rains wreaked havoc.

Mr. Clinton should begin by following up with donors who pledged \$353 million recently in a conference sponsored by the Inter American Development Bank. Too often pledges are not delivered on time, or at all. Last year, donors promised to meet Haiti's \$121 million request for post-hurricane assistance, but so far only \$71 million has been funded.

Ultimately, however, Haitians have to demonstrate that they are able to help themselves. Most of the island's residents survive on less than \$2 per day; they are doing well just to get from one day to the next.

Haiti's elite and its political class may have only this last chance to show that they can improve their own country in exchange for aid from abroad.

Cleaning up corruption is a necessary place to start. Haiti ranks fourth in cor-

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ruption among 180 countries, according to Transparency International, with only Iraq, Myanmar and Somalia ranked worse in lack of transparency. That's why most of the aid to Haiti goes to private groups or comes in the form of non-government investment; no one trusts public officials. Haiti's leaders must show that they are capable of running a clean government.

Ridding Haiti of rampant corruption in the judiciary and politics won't happen overnight -- that's a generational task. But here's a way for Haiti's leaders to show they are prepared to make a new start: Find the killers of Radio Haiti Inter Director Jean Dominique, a respected and brave journalist whose April 2000 murder remains unpunished.

In the nine years since he was gunned down, the case has been handled by six investigating judges, the latest of whom was removed for corruption in March. Mr. Dominique's murder symbolizes the failure of Haiti's criminal justice system and the weakness of its institutions. Its resolution would give Haiti's leaders and its political class an instant boost in credibility. After all, it's their country, and they're responsible for its future.

If they can't meet the challenges facing Haiti, even a platoon of Bill Clintons and international donors won't save them.

----- INDEX REFERENCES -----

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 PRINT THIS**EDITORIAL: Can Haiti itself be rescued?**

Palm Beach Post Editorial

Thursday, May 21, 2009

The Coast Guard and local rescue officials performed heroically to save Haitians whose boat sank as they tried to come to this country illegally. If only the response to the long-term crisis could be as effective as the response to the short-term emergency.

The best way to keep Haitians from dying while trying to get to this country is to improve conditions in their own country. Yet even as the deaths of as many as 19 people off Palm Beach underline the risks Haitians will take to escape the country, there are hopeful signs. Former President Clinton will be named special United Nations envoy to Haiti, where he is popular because in 1994 he sent U.S. troops to help remove coup leader Raoul Cedras and restore elected President Jean-Bertrand Aristide.



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Mr. Aristide's later drift toward dictatorship and eventual retreat into exile, however, are symptomatic of the political problems that have complicated Haiti's recovery. As U.S. Rep. Alcee Hastings, D-Miramar, says, Haitians' "own contentious attitudes toward each other" have delayed political progress. But he thinks President Clinton can make a difference.

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Mr. Clinton spoke last month at a conference during which aid organizations and countries including the United States pledged \$324 million in emergency help to Haiti over the next two years. Mr. Clinton vowed that the money would not be wasted. He said the government of President Rene Preval has a plan, "and we can help them have the capacity to implement it." Rep. Hastings said one of Mr. Clinton's key jobs would be giving accountability to aid programs. What the donors have pledged is sufficient if, as has not always been the case, those donors follow through on their pledges.

Share This Story But Rep. Hastings feels "extreme frustration and agitation" that President Obama has not granted Temporary Protected Status to Haitians. TPS would allow Haitians in the U.S. illegally to remain legally and work without being deported. Rep. Hastings, who says the U.S. cannot afford a "failed state" in this hemisphere, said TPS would increase the amount of money Haitians can send home in remittances, helping to stabilize Haiti's economy. It would not trigger a "mass exodus," he said, noting that the Coast Guard should and would prevent new Haitians from arriving.

EDITORIAL: Can Haiti itself be rescued?

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Because last year's storms hammered Haiti so severely and because of Mr. Clinton's appointment in conjunction with a new international effort, Temporary Protected Status makes sense for Haitians. It would give the country time to recover and for the new programs to take hold. The emphasis, however, is on "temporary." The commitment is to help Haiti recover, not to make America a default haven for a country that eventually gives up on itself.

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July 8, 2009

World

'Buried' Haitian City Braces For New Storm Season

by Corey Flintoff

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Corey Flintoff/NPR

Workers make their way through a street filled with dirt and debris from last year's hurricanes in Gonaïves, Haiti.



Corey Flintoff/NPR

Officials say about 60 percent of the mud from last year's floods has been cleared from the Haitian city of Gonaïves, but the next hurricane season is just weeks away.

All Things Considered, May 19, 2009 · As another hurricane season approaches, people in Haiti are still digging out from a devastating series of storms last summer and fall. The storms of 2008 brought massive flooding and mudslides that killed about 800 people and left more than 100,000 homeless.

Among the hardest hit was the port city of Gonaïves, where houses and streets were covered by mud and debris in heaps up to 9 feet high. With the help of international aid, people are in a race to clean out the city's canals so that the coming rains will be less likely to produce more devastating floods this year. The official start of hurricane season is June 1.

Deadly Mudslides Buried Parts Of City

Tropical Storm Fay and hurricanes Gustav, Hanna and Ike swept across Haiti last August and September. The torrents of rain melted the mountainsides and engulfed Gonaïves, a city of about 200,000.

Waves of mud buried people, animals and cars and filled houses to the rafters. Even after the water receded, the mud remained, entombing whole neighborhoods.

Slowly, by the shovelful, the soil and debris from the mudslides is being removed from Gonaïves and piled near the outskirts of the city in a wasteland that stretches for acres.

United Nations officials estimate that about 1.8 million metric tons of mud and debris have already been moved, with about 200,000 tons yet to go.

About 60 percent of the city has been cleared, says Jean-Pierre Mambounou, local director for the U.N. World Food Program. He also coordinates relief work with other groups in the area, including the Red Cross and CARE.

"This area was completely under water and mud," he says, gesturing to a busy street. Roadside vendors hawk their wares amid the dust churned up by dozens of dump trucks hauling dirt out of the city.

Food Aid Helps Pay For The Cleanup

Mambounou, a native of Congo-Brazzaville, has worked for the WFP for 14

years, responding to disasters and wars in places such as Rwanda. He arrived in Gonaives just after the storms that left much of the city encased in mud.

Asifa, one of Gonaives' low-lying neighborhoods, resembles a busy archaeological site, as if the residents of Pompeii had come back to life to excavate their own city. Dirt removed from houses still fills many streets. Narrow pathways wind through piles of debris that tower higher than people's heads.

Coordinator Dieupere Fleur stands amid a crowd of people who are waiting to sign up for a program that pays them in food while they work to shovel mud from their houses and yards. The program also provides extra workers when they are needed to help families. Workers in this neighborhood have cleaned about 400 dwellings so far, Fleur says.

Cleaning Houses Is Not Enough

Fleur and Mambounou trudge through streets where homeowners are dumping wheelbarrows full of debris. Some neighborhood women call out to them in Creole, "Hey, the rice is good, but you need to give us some beans, too."

Fleur says this particular project is designed to help about 12,600 people in the immediate area. So far, he says, it has reached about 8,000.

He notes that cleaning out a mud-crusted house doesn't always mean a family can move back into its home. The mud and floodwaters smashed doors and shutters. Until those repairs are made, houses can't be secured to protect any personal possessions from theft. Many people are still living with relatives on higher ground, or in tents put up by relief organizations, he says.

The floods also wiped out many small businesses — food and clothing vendors, charcoal sellers and motorcycle mechanics — so common to Haitian neighborhood life. Anton Nozil operated a small Internet cafe, where people went to make phone calls or send e-mail messages to relatives in the U.S. Now, only the sign remains.

Nozil hopes there will be a way to start up again. "You can see a small business like this is of use to people here. It didn't bring a lot of money, but it was worth something," he says.

The Underlying Problem Remains

Mountains surround Gonaives. They were the source of the mud that caused so much damage and hardship. Most of the mountains are nearly white, with limestone exposed and eroding.

"The mountains, the hills around Gonaives, you can see they are completely barren. Whenever it rains, rainwater and the mud come down to the city. That's a problem," Mambounou says.

The mountains were stripped of their trees years ago by desperate people who needed charcoal for cooking fuel. Heavy rains then washed off the topsoil.

Haiti's rainy season usually begins in May, but Mambounou says the city hasn't seen much rain yet. He thinks Gonaives is likely to survive drenching rains better than it did last fall, because key drainage canals have been cleared.

But Gonaives doesn't have long to finish its cleanup. The hurricane season begins next month, and for Haiti, it usually brings its fiercest storms by September.

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The Miami Herald

Posted on Sat, Apr. 18, 2009

Haiti deserves TPS designation

Since the early days of the Carter administration, the United States has detained Haitians who arrived by sea and overwhelmingly denied them asylum. Haitians on the high seas have often been interdicted and returned to Haiti.

Requests to grant Temporary Protected Status (TPS) to Haiti -- a status that would give Haitian nationals here legal status and work authorization during times of civil strife or natural disaster -- have been denied by both Democratic and Republican administrations.

Despite this, 30,000 Haitians at risk of being deported have looked to the new administration with hope. Early signs, however, indicate that Haitians may continue to endure discriminatory treatment. Renewed requests to the Obama administration to grant TPS for Haiti have poured in.

If any country deserves TPS, it is Haiti. The U.S. State Department warns visitors that there are no "safe areas" in Haiti and that "kidnapping, death threats, murders, drug-related shootouts, armed robberies, break-ins and car jackings are common." In August and September 2008, Hurricanes Gustav and Ike and Tropical Storms Fay and Hanna passed through Haiti, causing severe damage and the deaths of close to 700 persons. Massive flooding from the storms destroyed homes, crops, bridges and schools with tens of thousands of persons displaced.

To date, there has been no response from the administration except for Homeland Security Director Janet Napolitano repeating the old canard that thousands in Haiti would head for Miami.

This is unfounded. Many Haitians have little means to set off, as their water craft were destroyed by the storms. It is also well known in Haiti that the U.S. Coast Guard patrols not far from the Haitian coast, ready to return anyone who attempts to leave by sea.

In Congress, the Haitian Protection Act of 2009, a bill to grant TPS to Haiti, has attracted 42 cosponsors, but three Republican cosponsors of the same bill last year -- Reps. Ileana Ros-Lehtinen and Mario and Lincoln Diaz-Balart -- are missing. By adding their names to the bill, they could give the administration the bipartisan signal of support needed to move ahead.

Haiti continues its downward spiral. Hundreds of thousands of Haitians suffer from shortfalls in food and basic services, and many schools, hospitals and bridges remain too badly damaged to function. The least we can do is give 30,000 Haitians the right to remain here temporarily to work and send money home until conditions in Haiti improve. It is the poorest nation in our hemisphere.

That's what the Bush administration did for Honduran and Salvadoran nationals in September of 2008 when it extended TPS for the "lingering effects" of Hurricane Mitch, which hit Central America more than 10 years ago.

President Obama can put his words of change into action by doing the same for Haitians and ending a long-standing unjust policy. Yes, he can.

THOMAS WENSKI, bishop, Orlando Diocese, Orlando

The Washington Post

Impoverished Haiti Slips Further as Remittances Dry Up

By Mary Beth Sheridan
Washington Post Staff Writer
Friday, April 17, 2009

PORT-AU-PRINCE, Haiti, April 16 -- The U.S. economic crisis touched down recently in the dusty town where Marie Rosita Simon ekes out a living selling sandals. Her brother, a New Jersey cabdriver, slashed his monthly \$400 transfer to her by half because his business was off.

For Simon, that amounted to a 40 percent plunge in income for her family of five. Coming after a horrendous year in which food prices soared and hurricanes washed away her plantain and bean crops, the 43-year-old street vendor decided something had to go: dinner. And sometimes she can't provide breakfast for her children.

"They're hungry," she confessed.

Secretary of State Hillary Rodham Clinton flew to Haiti on Thursday, en route to a summit with hemispheric leaders concerned that the global economic crisis could push Latin America and the Caribbean into another "lost decade." Haiti, a Maryland-size nation in which 80 percent of the population lives on less than \$2 a day, offers perhaps the most worrisome example of how the recession could worsen poverty in the region's vulnerable countries.

Clinton told reporters Thursday that because of Haiti's dire economic situation, the Obama administration is considering granting temporary legal status to Haitians who have come to the United States illegally, so they could still keep sending money home. And she promised to continue helping Haiti rebuild its shattered economy, after the United States and other countries and organizations at a conference in Washington this week made pledges of \$324 million in aid, far less than the \$900 million sought by the Haitian government.

"Haiti deserves our help," Clinton said at a news conference in Port-au-Prince, the capital.

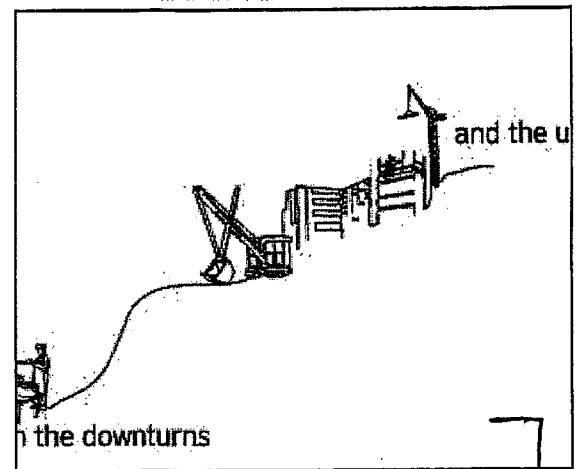
Shrinking remittances are one of the main ways the crisis could harm Latin America and the Caribbean. The cash sent home from immigrant nannies, hotel workers and gardeners from Los Angeles to Bethesda has ballooned to a \$69 billion-a-year lifeline in the region in the past decade. It is particularly important for small countries such as Haiti, which received about \$1.65 billion last year -- more than a quarter of the country's annual income.

These transfers have dropped 13 percent in the region in the first few months of the year, according to Luis Alberto Moreno, president of the Inter-American Development Bank.

In Haiti, the reduction in remittances can have dramatic long-term consequences. Most schools are private, and students are often kept home when parents can't pay the tuition, returning months or years later.

Jimmy Pierre-Sant, a 25-year-old in Cabaret, a plantain-growing town about 30 miles north of Port-au-Prince, is one of the indirect victims of the U.S. recession. Several months ago, his aunt in Winter Haven, Fla., was laid off from her factory job. Short of cash, she and other relatives have cut their bimonthly payments to Pierre-Sant's family from about \$200 to \$50. That meant he had to quit school yet again.

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"I felt very bad about it. I'm the only one in my family who got to 11th grade. I was ahead of everybody. I loved school," Pierre-Sant, in a Bugle Boy T-shirt and plaid shorts, said as he sat on the concrete patio of his grandmother's shack, where he sells soft drinks from a cooler.

Simon, the sandal seller, who also lives in Cabaret, has managed to keep her two children and the niece she is raising in school. But at times there is only enough money for one meal a day.

"Sometimes I let them suffer in order to pay the school tuition. I never had to do that in the past," she said.

Clinton said the Obama administration was "looking carefully" at whether to suspend deportation of Haitians in the United States illegally and allow them to work temporarily. The Haitian government has requested that its immigrants abroad be awarded such a status, but the Bush administration had declined.

"We are going to be considering how best to help the people who are here continue to have those resources" sent by relatives in the United States, Clinton said at the news conference. She warned, however, that any such program would apply only to Haitians who had moved to the United States before Obama took office. "We don't want to encourage other Haitians to make the dangerous journey across the water," she said.

The crisis has shattered a period of economic improvement in Latin America and the Caribbean, which benefited from international growth and booming trade in recent years. Even Haiti had started to inch forward, after years of political turbulence and violence involving street gangs.

But then global food prices soared last year, setting off riots across Haiti that toppled the government. While prices have eased, they have not returned to their old levels. Rice is still about 30 percent more expensive than in August 2007; cooking oil costs 50 percent more.

And residents are still trying to recover from four hurricanes that pounded Haiti last year, killing 800 people and causing \$1 billion in damage.

In a sign of how strained family budgets are, many Haitians can't even afford to spend 12 cents to buy a mud cookie, a snack consumed by the poorest.

"There's no money," said Mona Pierre, as she mixed clay, water and shortening to make the cookies in a market near the impoverished Cite Soleil slum in Port-au-Prince.

Anne Hastings, director of Fonkoze, the biggest micro-credit institution serving the poor in Haiti, said she is turning away new borrowers for the first time since she began running the agency 13 years ago, since her bank credit tightened in the international financial crisis.

The combination of high food prices, the hurricane damage and the economic crisis could create a combustible situation in a country that is still so fragile that a 9,000-member U.N. peacekeeping force keeps order, said Hastings, a former management consultant in Washington.

"Everyone thinks we're going to explode any day now," she said.

A series of high-profile figures, including former president Bill Clinton, U.N. Secretary General Ban Ki-moon and rap artist Wyclef Jean, have been trying to focus global attention on Haiti to ensure it is not ignored by nations focused on their own economic problems.

Haiti's best chance to emerge from crisis, they say, could be a special trade preference granted by the U.S. Congress that will allow this impoverished nation to export garments duty-free to the United States for nine years.

On Thursday, Clinton strolled through a huge factory in Port-au-Prince where rows of young men and women ran jeans and khaki slacks through sewing machines. Clinton noted that the nearly 500 workers

earned two to three times the \$2-a-day minimum wage.

"This is a direct result of actions taken by the U.S. Congress," she said. The trade preference program had created 11,000 jobs in Haiti so far, she said.

Clinton announced more than \$50 million in additional funding for Haiti at the international conference Tuesday, including money for new roads to help get products to market.

The Haitian capital is full of reminders of what could happen if Haiti's economy continues to contract. In Petionville, a relatively upscale neighborhood, businesses still have spider-webbed windows that were attacked during food riots last year.

Mathias Pierre, 42, who grew up in a poor neighborhood but now runs a \$2.5 million-a-year computer business, was stunned when protesters shattered the windows of his firm in Petionville.

"It created the fears we have today, that anything can happen," he said. "The level of poverty is too high."

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Chicago Tribune, April 16, 2009

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Let the Haitians stay

April 16, 2009

After President Barack Obama visits Mexico he heads to the Caribbean, where he faces a particularly urgent case of unfinished business in Haiti, the hemisphere's poorest country.

President Rene Preval has asked the U.S. to grant "temporary protected status" to immigrants from his island. Washington sometimes awards this status to shield immigrants from deportation when they cannot return home safely because of natural or man-made catastrophes. Haiti has suffered its share of both. Long wracked by violence, it has in recent years endured an earthquake, hurricanes and floods that have killed thousands of people and left many more homeless. Storms last summer caused more than \$1 billion in damage.

Since President Jean-Bertrand Aristide was forced out by a coup in 2004, United Nations peacekeepers have helped Haiti's government fight waves of kidnapping, drug trafficking, violent crime and, last year, a major food riot. The State Department warns Americans to stay away. But the U.S. has not stopped sending Haitians home.

With "temporary protected status," Haitian immigrants could stay here legally and qualify for work authorization until their country has recovered. Critics fear a flood of new immigrants, but protected status would apply only to immigrants who are already here. Newcomers who arrive illegally would be blocked from entry or deported if they're caught later.

Obama recently granted a one-year extension of temporary protected status to immigrants from Liberia. Nicaraguans, Salvadorans, Somalians, Burundians, Hondurans and Sudanese received similar reprieves from presidents before Obama.

So what about Haiti?

Thirty thousand Haitian immigrants face deportation to their homeland. They can do a lot more good by staying here. Haitians in the U.S. send home more than \$1 billion a year in remittances, according to the World Bank. That's about a fourth of the bereft island nation's gross domestic product.

The Obama team has promised "generous" participation with other countries in helping Haiti get back on its feet. Secretary of State Hillary Clinton is scheduled to visit the island Thursday before joining Obama at the Fifth Summit of the Americas this weekend in Trinidad and Tobago. Hundreds of deportees are being held at the expense of the U.S. government. If they have committed no crime other than being here illegally, let's be humane. Let them stay for now.